

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
NITTANY WAREHOUSE L.P.,  
PYRAMID CHEMICAL SALES COMPANY  
and JOEL D. UDELL  
Defendants.

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

1. This is a civil action against NITTANY WAREHOUSE L.P., PYRAMID CHEMICAL SALES COMPANY, and JOEL D. UDELL under Sections 107 and 113(b) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§9607 and 9613(b), for recovery of response costs incurred and to be incurred by the United States in response to the release, or threatened release, of hazardous substances at the Pyramid Chemical Site (“Site”), located at 16 and 22 High Street in Pottstown, Montgomery County, Pennsylvania. In addition, the United States seeks a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), on liability that will be binding in future actions to recover further costs incurred at or in connection with the Site.

## **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter, pursuant to 28 U.S.C. § 1345 and 42 U.S.C. §§ 9606(b), 9607(a) and (c)(3), and 9613(b).

3. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b), because the claims arose, and threatened and actual release of hazardous substances occurred, in this district.

## **DEFENDANTS**

4. Defendant NITTANY WAREHOUSE L.P. (“Nittany”), a limited partnership organized under the laws of the Commonwealth of Pennsylvania, is a former owner of the property on which the Site is located and a former operator of the Site. Nittany is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Nittany is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 107(a)(2) as a person who owned or operated a facility at the time of disposal of a hazardous substance.

5. Defendant PYRAMID CHEMICAL COMPANY (“Pyramid”), a Pennsylvania Corporation, is a former operator of the Site. Pyramid is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Pyramid is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 107(a)(2) as a person who owned or operated a facility at the time of disposal of a hazardous substance.

6. Defendant JOEL B. UDELL (“Udell”), a real person, is a limited partner in Nittany and the Chief Executive Officer of Pyramid and a former operator of the Site. Udell is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Udell is liable under

Section 107(a)(2) of CERCLA, 42 U.S.C. § 107(a)(2) as a person who owned or operated a facility at the time of disposal of a hazardous substance.

## **GENERAL ALLEGATIONS**

### **History of the Site**

7. The Site is located at 16 and 22 High Street (at the intersection of High and Manatawny Streets) in Pottstown, Montgomery County, Pennsylvania. The Site formerly contained two warehouses used for a chemical wholesale operation.

8. The Site is surrounded by a mixture of residential and commercial properties. The Manatawny Creek is located adjacent to the Site and leads into the Schuylkill River. The Montgomery County Community College, together with a day care center, is located in close proximity to the Site.

9. On or about April 3, 2000, the Montgomery County Court of Common Pleas issued an Order to Defendants Nittany and Udell ("Montgomery County Order") to remove all inventory from both warehouses. The Montgomery County Order called for the removal of all wastes and/or product within 90 days from the warehouse located at 22 High Street and within 9 months from the warehouse located at 16 High Street. The location at 16 High Street has also been previously identified as 2 High Street; they both refer to the same property.

10. On April 4, 2000, the EPA On-Scene Coordinator ("OSC"), pursuant to the National Contingency Plan ("NCP"), began a Removal Assessment to investigate allegations of improper storage of hazardous substances, pollutants and contaminants posing a threat to public health, welfare and the environment at both of the warehouse facilities located on the Site. During the Removal Assessment, over 2000 drums and / or containers of waste materials and other chemicals

were observed throughout the Site. In some places, the drums were stacked in three layers. Officials observed many drums that were rusted, bulging, stressed or otherwise in poor condition. Some of the drums had labels identifying the contents as “flammables,” “corrosives,” “oxidizers,” or “poisons.” In addition, open bags of solid powder product, believed to be dyes and pigments, were observed at various locations throughout the Site. No segregation of hazardous materials was evident. No secondary containment in the event of a release of hazardous substances was observed in the warehouses. The two warehouses were observed to be in a dilapidated condition, and part of the roof at the warehouse at 2 High Street had collapsed. A prominent odor, believed to emanate from a spill, was detected in at least one section of the warehouse at 2 High Street.

11. On or about June 8, 2000, EPA received a letter from the Borough of Pottstown requesting technical assistance in managing the removal of the hazardous substances, pollutants and contaminants at the Site. In the letter the Borough indicated that Defendants were not complying with the Montgomery County Order.

12. On or about June 23, 2000, EPA continued its Removal Assessment, including a walkthrough of both warehouses. The walkthrough revealed that conditions at both warehouses remained hazardous.

13. On or about July 14, 2000, EPA determined that an actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or environment, and that a removal action was required.

14. On July 14, 2000, EPA issued an Administrative Order on Consent (“AOC”), Docket No. III-2000-0021-DC, to Defendants Nittany and Pyramid for performance of removal action at the Site and for EPA access. Defendant Udell signed the July 14, 2000, AOC on behalf

of Nittany and Pyramid. The July 14, 2000, AOC required defendants Nittany and Pyramid to perform the following removal activities, among others:

- a) provide Site security;
- b) provide fire protection appropriate to the conditions at the Site;
- c) secure all hazardous substances at the Site stored in drums and other containers to prevent their interaction and/or release, and segregate them according to compatibility;
- d) collect, remove and properly dispose of off-Site all freestanding hazardous substances, including but not limited to, spilled materials;
- e) examine all drums and containers on-Site for integrity and contents, supply all information to EPA regarding chemical contents and conditions of those drums and containers;
- f) properly dispose of off-Site all hazardous substances that are suspected to be off-specification or are in off-specification containers; or subject to EPA's prior approval that the materials are not subject to disposal, recycling, arrange for their proper use in commerce;
- g) arrange for the reuse/recycling of certain other substances, subject to EPA's prior approval;
- h) transport all hazardous substances designated for off-Site disposal to an EPA-approved disposal facility in accordance with U.S. Department of Transportation requirements, and assure their proper disposal in accordance with applicable laws and regulations;

- i) treat and/or remove and properly dispose of off-Site contaminated water generated as a result of the above items (e.g. equipment and sampling related fluids) in accordance with promulgated requirements and standards;
- j) provide Site specific health and safety measures, including preparation and implementation of a Health and Safety Plan (“HASP”) for actions to be performed at the Site, to protect the health and safety of workers, other personnel and the public from the hazardous substances and work-related health and safety hazards during the response action required by the July 14, 2000, AOC;
- k) obtain a Hazardous Waste Generator Identification Number; and
- l) provide an expeditious schedule for implementation of the required Response Action Plan (“RAP”) which sets out the tasks necessary to address the hazardous environmental conditions at the Site.

15. EPA incurred response costs in excess of \$168,000 in performing response actions at the Site, including without limitation, studies, investigations, provision of security and other response costs. The costs that EPA incurred were increased due to Defendants’ delinquent, tardy, inadequate and faulty compliance with the AOC.

#### **CLAIM FOR RELIEF**

16. The United States realleges and incorporates by reference paragraphs 1 through 15, above, as if fully set forth below.

17. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as amended, provides in pertinent part:

Notwithstanding any other provision or rule of law,  
and subject only to the defenses set forth in  
subsection (b) of this section --  
(1) the owner and operator of a vessel or facility,  
(2) any person who at the time of disposal of any  
hazardous substance owned or operated any facility at  
which such hazardous substances were disposed of,  
(3) any person who by contract, agreement, or  
otherwise arranged for disposal or treatment, or  
arranged with a transporter for transport for disposal  
or treatment, of hazardous substances owned or  
possessed by such person, by any other party or  
entity, at any facility or incineration vessel owned or  
operated by another party or entity and containing  
such hazardous substances, . . . from which there is a  
release, or a threatened release which causes the  
incurrence of response costs, of a hazardous  
substance, shall be liable for --  
(A) all costs of removal or remedial action  
incurred by the United States Government . . . not  
inconsistent with the national contingency plan; . . .

18. Hazardous substances, including lead and chromium, were found at the Site. These substances are hazardous within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

19. Hazardous substances found at the Site were released or threatened to be released into the environment within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and these hazardous substances were disposed of at the Site within the meaning of Section 101(29) of CERCLA, 42 U.S.C. § 9601(29).

20. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. To protect the public health, welfare and the environment from the actual or threatened release of hazardous substances into the environment from the Site, the Administrator

of EPA, pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), has undertaken response activities with respect to the Site that are not inconsistent with the NCP, including investigations, monitoring, assessing, testing, enforcement activities, and removal activities in connection with releases of hazardous substances.

22. Defendants Nittany, Pyramid, and Udell are liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(1) as owners or operators of a facility at the time of disposal of a hazardous substance.

23. In connection with the release and/or threatened release of hazardous substances at the Site, the United States has incurred unreimbursed response costs in excess of \$113,000. These response costs were incurred in a manner not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. The United States will continue to incur response costs, including enforcement costs, in connection with the Site.

24. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are jointly and severally liable for all costs recoverable under CERCLA incurred and to be incurred by the United States in connection with the Site.

### **PRAYER FOR RELIEF**

WHEREFORE, the United States requests that the Court enter a judgment against the Defendants Nittany, Pyramid and Udell, jointly and severally, as follows:

A. Order Defendants to pay all unreimbursed response costs incurred by the United States in connection with the Site, including pre- and post-judgment interest;



B. Enter a declaratory judgment as to Defendants' liability that will be binding in any future action or actions to recover further response costs or damages;

C. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted this \_\_\_\_\_ day of January, 2004,

FOR THE UNITED STATES OF AMERICA

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